

UIIdaho Law Digital Commons @ UIIdaho Law

Not Reported

Idaho Supreme Court Records & Briefs

1-17-2018

State v. Martinez Appellant's Brief Dckt. 45289

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Martinez Appellant's Brief Dckt. 45289" (2018). *Not Reported*. 4110.
https://digitalcommons.law.uidaho.edu/not_reported/4110

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

KIMBERLY A. COSTER
Deputy State Appellate Public Defender
I.S.B. #4115
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 45289
)	
v.)	ADA COUNTY NO. CR01-16-39853
)	
PAUL ANTHONY MARTINEZ,)	
)	APPELLANT'S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Paul Anthony Martinez pled guilty to two counts of lewd conduct with a minor under the age of sixteen. The district court sentenced him to a unified term of thirty years, with seven years fixed, on each count, to run concurrently, and declined to retain jurisdiction. On appeal, the Mr. Martinez asserts his sentences are excessive and unreasonable under the circumstances, given the failure to retain jurisdiction, representing an abuse of the district court's sentencing discretion.

Statement of the Facts and Course of Proceedings

Mr. Martinez was charged with multiple counts of lewd conduct with a minor following disclosures made by his ten year-old daughter and by his fourteen year-old step-daughter that he had engaged in sexually inappropriate behaviors with them. (R., pp.8, 25; PSI, p.3.)¹ Mr. Martinez was forty-three years old at the time of the disclosures. (PSI, p.2.) The ten year-old girl reported the behavior happened one time, and the fourteen year-old detailed multiple instances that began when she was six. (R., pp.25-28; PSI, pp.3-7.)

Pursuant to an agreement with the State, Mr. Martinez pled guilty to two counts of lewd conduct with a minor under the age of sixteen; the State dismissed the remaining counts and at sentencing recommended a thirty-year term, with seven years fixed. (R., p.63; 4/24/17 Tr., p.6, Ls.6-21.) Mr. Martinez argued for a ten-to-fifteen-year sentence and asked the court to retain jurisdiction in order to provide more information about Mr. Martinez's rehabilitation potential. (6/19/17 Tr., p.24, Ls.13-16.)

The district court imposed concurrent, unified sentences of thirty years, with seven years fixed, on each count, but declined to retain jurisdiction. (R., p.75.) Mr. Martinez filed a timely notice of appeal. (R., p.78.)

ISSUE

Did the district court abuse its discretion by imposing sentences that are excessive and by declining to retain jurisdiction?

¹ Citations to the Presentence Investigation Report and attached materials will use the designation "PSI" and will include the page numbers associated with the 314-page electronic file containing those documents, and also includes the Psychosexual Evaluation ("PSE") contained within the same electronic file, at pages 195-241.

ARGUMENT

The District Court Abused Its Discretion By Imposing Sentences That Are Excessive And By Declining To Retain Jurisdiction

A. Introduction

Mr. Martinez contends that in light of his acceptance of responsibility and remorse, and given his amenability to treatment, the district court abused its discretion by imposing excessive sentences, and by declining to retain jurisdiction.

B. Standard Of Review

The appellate court reviews the district court's sentencing decisions for an abuse of discretion, which occurs if the district court imposed a sentence that is unreasonable, and thus excessive, "under any reasonable view of the facts." *State v. Strand*, 137 Idaho 457, 460 (2002); *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982). The appellate court will conduct an independent review of the record giving consideration to the nature of the offense, the character of the offender, and the protection of the public interest. *State v. Miller*, 151 Idaho 828, 834 (2011). A sentence will be deemed "reasonable" "if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution." *Miller*, 151 Idaho at 834. When reviewing the length of a sentence, the appellate court considers the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, (2007).

The district court also has the discretion to retain jurisdiction. *See* I.C. § 19-2601(4). The primary purpose of retaining jurisdiction is to afford the trial court additional time for evaluation of the defendant's rehabilitation potential and suitability for probation. *State v. Jones*, 141 Idaho 673, 677 (Ct. App. 2005). The sentencing court's refusal to retain jurisdiction is not

an abuse of discretion, provided the court already has sufficient information upon which to conclude that the defendant is not a suitable candidate for probation. *Id.*, at 677.

C. The District Court Abused Its Discretion By Imposing An Excessive Sentence, Without Retaining Jurisdiction

Mr. Martinez was forty three years old at the time of his sentencing. (PSI, p.27.) According to his psychosexual evaluation (“PSE”), he has a diagnosis of pedophilia and antisocial personality disorders, and he has been engaged inappropriate sexual behaviors since adolescence. (PSI, p.195.) However, Mr. Martinez has never completed any treatment for his disorders; when he was a juvenile, he was ordered to undergo sex offender treatment, but because his family moved he attended only two therapy sessions. (PSI, p.195.) Consequently his disorders have never been addressed or treated. (PSI, p.27.) Mr. Martinez wants to understand his behavior and he knows that he needs treatment; he is aware he is vulnerable to re-offending without help. (PSI, p.195.) According to his PSE, Mr. Martinez presents a high risk of re-offending; however, he is also amenable to treatment, especially in a structured environment. (PSI, pp.27, 200.) The district court should have provided him the opportunity to obtain that treatment in a structured rider program, allowing him to demonstrate his potential for rehabilitation and suitability for probation. By imposing a lengthy sentence without retaining jurisdiction, the district court deprived Mr. Martinez of that opportunity, representing an abuse of the court’s sentencing discretion.

Mr. Martinez’s remorse and responsibility also should be considered mitigation warranting a less severe sentence in this case. *See State v. Coffin*, 146 Idaho at 171. In his personal address to the court at sentencing hearing, Mr. Martinez took responsibility for his actions, and expressed his sadness and shame. (PSI, p.60; 6/19/17 Tr., p.19, L.3 – p.22, L.25.) He told the court that, in addition to getting treatment, he wanted to show accountability for his

actions, and he wanted closure for his victims. (6/19/17 Tr., p.21, Ls.3-10.) He stood before his victims and their mothers and he apologized to them for the pain he had caused. (6/19/17 Tr., p.19, L.3 – p.22, L.25.) After listening to their statements, Mr. Martinez told them,

I'm sorry for betraying you. I'm sorry for the things that I've caused, the feelings that you have towards me, the hate, the anger, the pain. I deserve it all. You don't have to feel like it's not something that you don't deserve to do to me. I do deserve it. I'm sorry. I need help.

(6/19/17 Tr., p.21, L.21 – p.22, L.3.)

In light of these mitigating factors, and notwithstanding the aggravating ones, Mr. Martinez contends that the district court's decision to sentence him to a unified thirty year term, with seven years fixed, represents an abuse the court's sentencing discretion.

CONCLUSION

Mr. Martinez respectfully requests that this Court vacate his sentence and remand the case to the district court with instructions that it impose a less severe sentence and retain jurisdiction.

DATED this 17th day of January, 2018.

_____/s/_____
KIMBERLY A. COSTER
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 17th day of January, 2018, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

PAUL ANTHONY MARTINEZ
INMATE #123940
ISCC
PO BOX 70010
BOISE ID 83707

DEBORAH A BAIL
DISTRICT COURT JUDGE
E-MAILED BRIEF

CRAIG A STEVELEY
ADA COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

KAC/eas